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Filing date: **04/01/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194351
Party	Plaintiff Kashi Company
Correspondence Address	LISABETH H. COAKLEY HARNESS, DICKEY & PIERCE, P.L.C. 5445 CORPORATE DRIVE, SUITE 200 TROY, MI 48098 UNITED STATES gdaurini@hdp.com, tjcomparoni@hdp.com
Submission	Other Motions/Papers
Filer's Name	Geoffrey D. Aurini
Filer's e-mail	gdaurini@hdp.com, tjcomparoni@hdp.com
Signature	/gda/
Date	04/01/2011
Attachments	91194351 CEREAL FOR A CHANGE GENERATION 294 040111.pdf (19 pages)(648087 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kashi Company)	
Opposer,)	
	)	Opposition No. 91194351
v.	)	Serial No. 77/775454
	)	Mark: CEREAL FOR A
Dawn Bolden	)	CHANGE GENERATION
Applicant.)	
)	

**OPPOSER’S MOTION TO COMPEL
APPLICANT’S INITIAL DISCLOSURES
AND TO SUSPEND PROCEEDINGS**

Opposer, Kashi Company (“Kashi” or “Opposer”), submits this motion to compel Applicants’ Initial Disclosures without objection pursuant to 37 C.F.R. 2.120(a), Fed. R. Civ. Proc. 37(a)(1) and Trademark Rule 2.120(e)(1) and to suspend proceedings pursuant to Trademark Rule 2.120(e)(2).

Procedural History

On March 31, 2010, Opposer filed a Notice of Opposition to registration of Applicant’s Trademark Application Serial Number 77/775454 for the mark CEREAL FOR A CHANGE GENERATION.

On March 31, 2010, the Board issued its Institution Order setting, among other dates, May 10, 2010 as the due date for Applicant’s Answer to the Notice of Opposition.

On May 25, 2010, the Board issued a Notice of Default to Applicant for her failure to timely file and serve an Answer to the Notice of Opposition.

On June 11, 2010, The Board issued a second Notice of Default to Applicant for her failure to timely file and serve an Answer to the Notice of Opposition. The June 11, 2010,

Notice of Default noted that the May 25, 2010 Notice of Default had been returned as undeliverable and further noted that:

This office conducted a whereabouts search and located an address for Dawn Bolden on the internet as follows:

5052 Leatherback Road,
Woodbridge, VA 22193-5047.

In view thereof, a copy of the Board's May 25, 2010 order is forwarded to applicant at the address indicated above.

On June 24, 2010, Applicant filed a Response to Notice of Default and an Answer to the Notice of Opposition identifying her mailing address, e-mail address and telephone number as

Defendant: Bolden, Dawn
5062 Leatherback Road
Woodbridge, VA 22193
UNITED STATES
Dawnb9956@yahoo.com Phone 571-331-7468

Additionally, paragraph "1" of Applicant's Response to Notice of Default noted the 5062 Leatherback Road address was "[c]urrent (non-permanent)." To date, Applicant has not filed a change of correspondence address with the Board and Applicant's correspondence address of record remains 5062 leatherback Road, Woodbridge, VA 22193. Opposer notes the discrepancy in the address set forth in the Board's June 11, 2010 Order and the address set forth in Applicant's Answer and Applicant's Response to Notice of Default and the correspondence address of record with the Trademark Trial and Appeal Board web-site.

On July 8, 2010, the Board issued an order setting aside the default, accepting the answer and resetting the discovery and trial dates. In its Order, the Board set Sunday, August 29, 2010 as the due date for Initial Disclosures.

On Monday, August 30, 2010, Opposer timely served its Initial Disclosures on Applicant via regular U.S. mail to the 5062 Leatherback Road address. Opposer assumes its Initial Disclosures were served since Opposer did not receive an undeliverable notice from the U.S. postal service. To date, Opposer has neither received Applicant's Initial Disclosures nor a request for extension of time to serve the Initial Disclosures on Opposer. Opposer, on October 7, 2010, presented a revised settlement proposal updating a proposal first presented to Applicant on March 24, 2010 and has engaged in settlement communications with Applicant regarding these proposals via the Dawnb9956@yahoo.com e-mail address as recently as November 30, 2010 and December 22, 2010. While applicant has never requested an extension of time to serve its Initial Disclosures, to allow for yet additional time for Applicant to consider the proposal before her since March 24, 2010 and October 7, 2010, Opposer offered a short extension as part of a consented 90-day extension of all trial dates filed on January 25, 2011. In a February 15, 2011 letter to Applicant, Opposer confirmed its extension was intended to expire on February 25, 2011. To date, Opposer still has not received Applicant's Initial Disclosures.

**Opposer's Good Faith Efforts to Resolve
the Dispute Prior to Filing the Instant Motion**

Opposer's counsel has made a good faith effort to contact Applicant and resolve this dispute. Specifically, on January 14, 2011, Opposer requested Applicant's Initial Disclosures via overnight letter and via e-mail to the mailing and email addresses listed on Applicant's Answer and Response to Notice of Default (see Exhibit "1"). According to the overnight shipper's online tracking service, the letter was delivered on January 17, 2011. Notwithstanding the delivery confirmation, Opposer's request for Initial Disclosures was returned to Opposer marked "return to sender" and "no longer @ this address." Applicant did not respond to the e-mail message requesting the Initial Disclosures.

Additionally, Opposer attempted to contact Applicant via telephone on January 21, 2011, at the telephone number listed on Applicant's Answer and the Response to Notice of Default. Applicant did not answer the call. Opposer left a voice mail message requesting the Initial Disclosures and offering to extend the Initial Disclosures due date (along with discovery and trial dates) if desired. Applicant did not respond to that phone message. Again on January 24, 2010, Opposer attempted to contact Applicant via e-mail (see Exhibit "2") and telephone at the e-mail address and telephone number listed on the Answer to the Notice of Opposition and Response to Notice of Default. Applicant did not return the e-mail message or phone message.

Additionally, on January 25, 2011, Opposer attempted to contact Applicant using an alternate telephone number that Applicant had previously supplied for use in connection with the Discovery conference. Opposer eventually reached Applicant on that day at the alternate telephone number and requested the Initial Disclosures and a consent to extend the discovery and trial dates in order to allow the parties additional time to consider the settlement proposal before Applicant since March 24, 2010 and October 7, 2010. Applicant consented to the extension.

During the January 25, 2011 telephone conversation, Applicant also indicated that she no longer lived at the 5062 Leatherback Road address and that she should now be served at 900 Southerly Road, Towson Maryland 21204. To date, Applicant has not filed a Change of Correspondence Address with the Board.

On February 14, 2011 and February 15, 2011, counsel for Opposer again contacted Applicant by telephone at the alternate telephone number and left a message with an individual identified as Applicant's daughter requesting that Applicant return the call to discuss outstanding issues. To date Applicant has not returned the telephone call.

On February 15, 2011, counsel for Opposer sent another letter to Applicant requesting the initial disclosures by February 25, 2011. See Exhibit “3” (enclosures omitted and the terms of the referenced settlement agreement redacted.) The letter was sent via overnight mail to the 900 Southerly Road address indicated by Applicant as her place of residence and by regular U.S. mail to the 5062 Leatherback Road address of record with the TTAB. The Federal Express tracking letter shows the letter was delivered to the 900 southerly Road address and signed for on February 16, 2010, by “D. Bolden.” See Exhibit “3.” (enclosures omitted and the terms of the referenced settlement agreement redacted.) Applicant has not responded to the February 15 letter.

Finally, on March 2, 2011, Opposer sent another letter to Applicant requesting the Initial Disclosures and serving discovery requests. See Exhibit “4”(enclosures omitted and the terms of the referenced settlement agreement redacted.) While discovery responses are not yet due, Applicant has not responded to the request for Initial Disclosures.

Opposer Requests a Suspension of Proceedings

The discovery period is set to close on April 26, 2011. On March 2, 2011, Opposer served discovery on Applicant without the aid of Applicant’s Initial Disclosures. Opposer should be allowed to supplement that discovery, if necessary, after a thorough review of Applicant’s Initial Disclosures. In view of the fact that discovery has not yet closed and further discovery may be necessary, Opposer respectfully requests the Board suspend this opposition pending issuance of the Board’s decision on the instant Motion pursuant to Trademark Rule 2.120(e)(2)


Conclusion

For the foregoing reasons, Opposer, Kashi Company, respectfully requests the Board enter an order compelling Applicants’ Initial Disclosures without objection and further requests

the Board to suspend proceedings pending disposition of this motion and, upon resumption of these proceedings, extend the discovery period and all subsequent discovery and trial dates by sixty (60) days.

Respectfully submitted,

Date: April 1, 2011

By: 
Geoffrey D. Aurini, Esq.
Harness, Dickey & Pierce, P.L.C.
5445 Corporate Drive, Suite 200
Troy, Michigan 48098
(248) 641-1255

Attorneys for Kashi Company

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kashi Company)	
Opposer,)	
	)	Opposition No. 91194351
v.	)	Serial No. 77/775454
	)	Mark: CEREAL FOR A
Dawn Bolden	)	CHANGE GENERATION
Applicant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Opposer's Motion to Compel Applicant's Initial Disclosures and Suspend Proceedings** has been served on Applicant, Dawn Bolden, by mailing said copy on April 1, 2011, via First Class Mail, postage prepaid to the following address of record with the Trademark Trial and Appeal Board:

Dawn Bolden
5062 Leatherback Road
Woodbridge, VA 22193

Additionally, a courtesy copy has been sent to Applicant at the following address indicated by Applicant to be her place of residence:

Dawn Bolden
900 Southerly Road, Apt. 309
Towson MD 21204



Timothy J. Comparoni

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kashi Company)
Opposer,)
v.)
Dawn Bolden)
Applicant.)
_____)

Opposition No. 91194351
Serial No. 77/775454
Mark: CEREAL FOR A
CHANGE GENERATION

EXHIBIT 1



Timothy J. Comparoni
Direct Dial: (248) 341-1348
tjcomparoni@hdp.com

January 14, 2011

VIA OVERNIGHT MAIL

Ms. Dawn Bolden
5062 Leatherback Rd
Woodbridge, VA 22193-5847

Re: CEREAL FOR A CHANGE GENERATION
Kashi Company v. Dawn Bolden
TTAB No. 91194351
Serial No. 77/775454
Our Ref. No. 8951-400294

Dear Ms. Bolden:

As you know, discovery closes January 26, 2011. We would prefer to resolve this dispute without the need for either party to serve and respond to discovery or to prepare for trial. Will you consent to a 60 or 90-day extension of discovery and trial dates so that we can continue settlement discussions?

Also, Initial Disclosures were due in this case by August 30, 2010. On August 30, 2010, we timely served you with Kashi's Initial Disclosures; however, we have yet to receive your Initial Disclosures. Please forward your initial disclosures within five (5) business days of the date of this message. We will of course agree to an extension of time for you to serve the disclosures if you will also agree to extend discovery and trial dates.

Finally, we would like to set up a conference call between you and Geoff Aurini to begin a dialog and discuss resolution of this matter. Can you please let me know your availability? We are happy to work around your schedule.

I look forward to hearing from you regarding your consent to extend discovery and trial dates.

Sincerely

Timothy J. Comparoni
Paralegal

Enc.

C: Geoffrey D. Aurini, Esq.

Ref: 8951-400294	Date: 14Jan11	SHIPPING:	20.90
Dep:	Wgt: 0.1 LBS	SPECIAL:	4.88
		HANDLING:	0.00
	DV: 0.00	TOTAL:	25.78
Svcs: STANDARD OVERNIGHT			
TRCK: 9061 5384 6426			

Harness, Dickey & Pierce, P.L.C. Attorneys and Counselors
5445 Corporate Drive, Suite 200, Troy, MI 48098

Phone 248.641.1600 Fax 248.641.0270

Metropolitan: Detroit, MI St. Louis, MO Washington, D.C. Portland, OR

www.hdp.com

Comparoni, Tim

From: Comparoni, Tim
Sent: Friday, January 14, 2011 10:30 AM
To: 'dawnb9956@yahoo.com'
Cc: Aurini, Geoffrey
Subject: CEREAL FOR A CHANGE GENERATION
Importance: High

Re: CEREAL FOR A CHANGE GENERATION
Kashi Company v. Dawn Bolden
TTAB No. 91194351
Serial No. 77775454
Our Ref. No. 8951-400294

Dear Ms. Bolden:

As you know, discovery closes January 26, 2011. We would prefer to resolve this dispute without the need for either party to serve and respond to discovery or to prepare for trial. Will you consent to a 60 or 90-day extension of discovery and trial dates so that we can continue settlement discussions?

Also, Initial Disclosures were due in this case by August 30, 2010. On August 30, 2010, we timely served you with Kashi's Initial Disclosures; however, we have yet to receive your Initial Disclosures. Please forward your initial disclosures within five (5) business days of the date of this message. We will of course agree to an extension of time for you to serve the disclosures if you will also agree to extend discovery and trial dates.

Finally, we would like to set up a conference call between you and Geoff Aurini to begin a dialog and discuss resolution of this matter. Can you please let me know your availability? We are happy to work around your schedule.

I look forward to hearing from you regarding your consent to extend discovery and trial dates.

Sincerely,

Tim Comparoni
Paralegal

Timothy J Comparoni
Paralegal

Direct: 248.341.1348
Office: 248.641.1600
Fax: 247.641.0270

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DICKEY

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Troy, Michigan 48098

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1/14/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kashi Company)
Opposer,)
v.)
Dawn Bolden)
Applicant.)
_____)

Opposition No. 91194351
Serial No. 77/775454
Mark: CEREAL FOR A
CHANGE GENERATION

EXHIBIT 2

Comparoni, Tim

From: Comparoni, Tim
Sent: Monday, January 24, 2011 3:50 PM
To: 'dawnb9956@yahoo.com'
Cc: Aurini, Geoffrey
Subject: CEREAL FOR A CHANGE GENERATION
Importance: High

Re: CEREAL FOR A CHANGE GENERATION
Kashi Company v. Dawn Bolden
TTAB No. 91194351
Serial No. 77/775454
Our Ref. No. 8951-400294

Dear Ms. Bolden:

Please confirm you have received our e-mail message dated January 14, 2011, requesting your Initial Disclosures and/or an extension of discovery or trial dates. If you do not contact us by the close of business, tomorrow January 25, 2011 we must file a motion to compel your initial disclosures with the TTAB in order to protect Kashi Company's rights in the opposition.

We would be happy to extend the time for you to serve your initial disclosures but we must first receive your consent to extend the current discovery and trial deadlines. Please contact me via telephone or e-mail to discuss the matter.

Finally, our letter to you dated January 14, 2011, and sent via overnight mail to 5062 Leatherback Road, Woodbridge, VA 22193 was returned marked "return to sender" and "no longer @ this address." Please advise us of your current mailing address.

I look forward to your response.

Sincerely,

Tim Comparoni
Paralegal

Timothy J Comparoni
Paralegal

Direct: 248.341.1348
Office: 248.641.1600
Fax: 247.641.0270

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1/25/2011

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kashi Company)	
Opposer,)	
	)	Opposition No. 91194351
v.	)	Serial No. 77/775454
	)	Mark: CEREAL FOR A
Dawn Bolden	)	CHANGE GENERATION
Applicant.)	
)	

EXHIBIT 3



Geoffrey D. Aurini
Direct Dial: (248) 641-1238
gaurini@hdp.com

February 15, 2011

VIA OVERNIGHT MAIL AND E-MAIL

Dawn Bolden
900 Southerly Road, Apt. 309
Towson MD 21204
dawnb9956@yahoo.com

Ref: 8951-400294	GDR	Date: 15Feb11	SHIPPING:	14.78
Wgt:	0.1 LBS		SPECIAL:	6.50
DV:	0.00		HANDLING:	0.00
			TOTAL:	21.28
Svcs: STANDARD OVERNIGHT ISR				
TRCK: 9061 5384 7628				

VIA REGULAR U.S. MAIL

Dawn Bolden
5062 Leatherback Road
Woodbridge, VA 22193

Re: CEREAL FOR A CHANGE GENERATION
Kashi Company v. Dawn Bolden
TTAB No. 91194351
Serial No. 77775454
Our Ref. No. 8951-400294

Dear Ms. Bolden,

I called your cell phone (571-331-4860) last night and again over the noon hour today and I believe I spoke with your daughter both times (I respectfully requested that you return my phone calls). While Kashi continues to be interested in resolving this matter it has been dragging on with what we view as only the occasional responsiveness on your part. You can understand that our client wishes to see this matter resolved soon.

First, we suggest you retain a trademark attorney to represent you in this matter to assist the parties in resolving this matter expeditiously.

Second, we must insist that you provide your initial disclosures on or before February 25, 2011 regardless of whether you hire an attorney. These disclosures were originally due by August 30, 2010. On January 25, the parties agreed to a 90-day extension of trial dates and a short extension for receiving your initial disclosures. With respect to initial disclosures, our intention was to grant you a one month extension to February 25, 2010 (remember, these disclosures were due August 30). If we do not

Harness, Dickey & Pierce, P.L.C. Attorneys and Counselors
5445 Corporate Drive, Suite 200, Troy, MI 48098

Phone 248.641.1600 Fax 248.641.0270

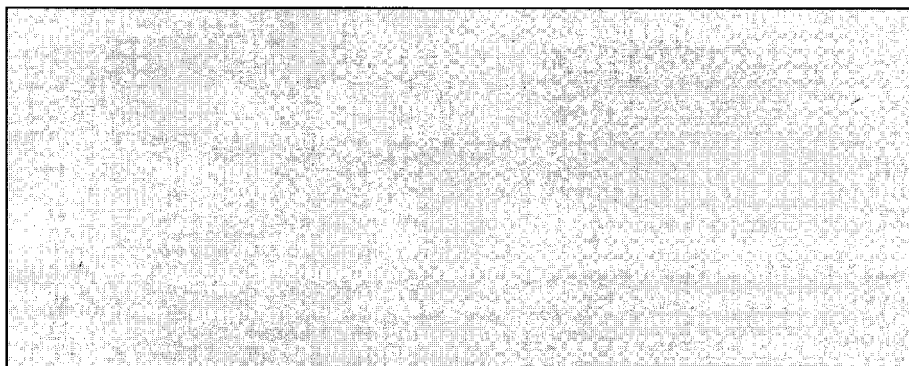
Metropolitan: Detroit, MI St. Louis, MO Washington, D.C. Portland, OR

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Ms. Dawn Bolden
February 15, 2011
Page 2 of 2

receive your initial disclosures by Feb. 25, we will serve discovery and reluctantly file a motion with the Trademark Trial and Appeal Board to compel your initial disclosures.

As you are aware from past communications, our client has prior common law trademark rights to DAY OF CHANGE and it wishes to ensure its prior rights are protected through what we believe is a simple coexistence agreement, consequently, as a means of amicably settling this matter, we propose the conditions listed below to avoid the problems above and as a means of allowing your mark to proceed to registration.



If you are agreeable to resolution of this matter under these terms, please indicate by signing below and returning a copy of this letter and the attached motion to my attention in the enclosed envelope. Otherwise, we look forward to receiving your initial disclosures.

Sincerely,

Geoffrey D. Aurini

GDA/tc
Enclosures

Agreed: _____
Dawn Bolden

Dated: _____, 2011



FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643
Telephone: 901-369-3600

February 19, 2011

Dear Customer:

The following is the proof-of-delivery for tracking number **906153847628**.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	D.BOLDEN	Delivery location:	TOWSON, MD
Service type:	Standard Envelope	Delivery date:	Feb 16, 2011 13:29

NO SIGNATURE IS AVAILABLE

FedEx Express proof-of-delivery details appear below; however, no signature is currently available for this shipment. Please check again later for a signature.

Shipping Information:

Tracking number:	906153847628	Ship date:	Feb 15, 2011
		Weight:	0.5 lbs/0.2 kg

Recipient:
TOWSON, MD US

Shipper:
TROY, MI US

Reference

8951-400294 GDA

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kashi Company)
Opposer,)
v.)
Dawn Bolden)
Applicant.)
_____)

Opposition No. 91194351
Serial No. 77/775454
Mark: CEREAL FOR A
CHANGE GENERATION

EXHIBIT 3



Geoffrey D. Aurini
Direct Dial: (248) 641-1238
gaurini@hdp.com

March 2, 2011

Dawn Bolden
900 Southerly Road, Apt. 309
Towson MD 21204
dawnb9956@yahoo.com

Dawn Bolden
5062 Leatherback Road
Woodbridge, VA 22193

Re: CEREAL FOR A CHANGE GENERATION
Kashi Company v. Dawn Bolden
TTAB No. 91194351
Serial No. 77/775454
Our Ref. No. 8951-400294

Dear Ms. Bolden,

Further to our letter dated February 15, 2011, and since we have not received your initial disclosures nor have we received a request for you to extend the time to serve the initial disclosures, we enclose the following discovery requests:

1. Opposer's First Set of Interrogatories to Applicant;
2. Opposer's First Request for Admissions to Applicant; and
3. Opposer's First request for Production of Documents and Things.

We again suggest you retain a trademark attorney to represent you in this matter and to assist the parties in resolving this matter expeditiously.

Please note that while Kashi reserves its rights in this matter, Kashi remains interested in resolving it amicably and without the need for further discovery and trial preparation.

As you are aware from past communications, our client enjoys prior common law trademark rights to DAY OF CHANGE and it wishes to ensure its prior rights are protected through what we believe is a simple coexistence agreement. Consequently,

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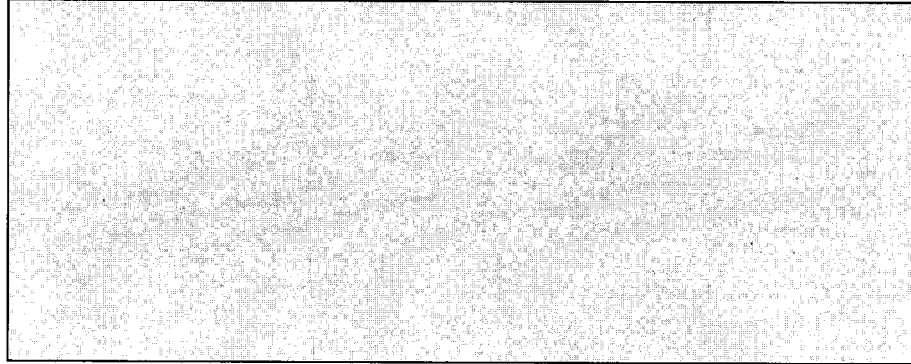
Phone 248.641.1600 Fax 248.641.0270

Metropolitan: Detroit, MI St. Louis, MO Washington, D.C. Portland, OR

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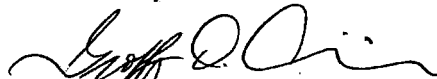
Ms. Dawn Bolden
March 2, 2011
Page 2 of 2

as a means of amicably settling this matter, we again propose the terms listed below as a means of resolving this matter.



If you are agreeable to resolution of this matter under these terms, please indicate by signing below and returning a copy of this letter and the attached motion to my attention in the enclosed envelope. Alternatively, please contact me with your counter-proposal for resolution of the matter.

Sincerely,



Geoffrey D. Aurini

GDA/tc
Enclosures

Agreed: _____
Dawn Bolden

Dated: _____, 2011